

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 10/23/2017

TIME: 08:42:00 AM

DEPT: C-66

JUDICIAL OFFICER PRESIDING: Kenneth J Medel

CLERK: Grachelle Macedo

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2017-00035975-CU-WM-CTL** CASE INIT.DATE: 09/27/2017

CASE TITLE: **Janice L McKechnie vs Susan Garcia [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

The Court, having taken the above-entitled matter under submission on 10/20/2017 and having fully considered the arguments of all parties, both written and oral, now rules as follows:

Petitioners Janice L. McKechnie and Christopher Siegel's Petition for Alternative Writ of Mandate is DENIED.

Petitioners are seeking to qualify an initiative measure for local election in the City of Lemon Grove. Pursuant to the procedure set forth in Elections Code Section 9203, subdivision (a), the City Attorney issued a ballot title and summary of the proposed measure on July 27, 2017. The ballot title as drafted by the City Attorney reads:

"An Ordinance Amendment of Medical Marijuana Dispensary Regulations Removing Children's Day Care Centers Licensed for Less Than 13 Children From 'Protected Use' Designation; Clarifying the Definition for Alcohol & Substance Treatment Centers; Adding Construction Apprenticeship Requirements; Allowing Dispensary Off-Site Distribution; Limiting Dispensary Permit Revocations Unless They Constitute a 'Serious Threat and Reckless Disregard for Public Health, Safety and General Welfare'; and Other Changes."

It is undisputed that there was no challenge to the above title (nor a challenge to the summary) by the filing of a writ of mandate pursuant to Elections Code 9204. Thus, there is a presumption that the above title was impartial and accurate as required by the code.

For whatever reason[1], the title printed by Petitioners on the petition packet that was circulated to the voters was not the complete title. The petition packet circulated by Petitioners contained the following ballot title:

"An Ordinance Amendment of Medical Marijuana Dispensary Regulations Removing Children's Day Care Centers Licensed for Less Than 13 Children From 'Protected Use' Designation; Clarifying the Definition for Alcohol & Substance Treatment Centers; Adding Construct."

A significant portion of the title was not re-printed in the petitions. In the title, the City Attorney listed six key changes to the current law proposed by the initiative: (1) removing day care centers from protected-use designation; (2) clarifying a definition; (3) adding apprenticeship requirement; (4) allowing off-site distribution; (5) limiting permit revocations; and (6) other changes. The title printed by Petitioners on the petition packet that was circulated to the voters included only two out of the six changes and omitted a total of 29 out of 63 words from the title drafted by the City Attorney.

By omitting a significant portion of the title, the proposed initiative petition was not compliant with Elections Code 9203(b), which requires "the ballot title prepared by the city attorney" must appear on each signature page.

In determining whether a departure from statutory requirements imposed on initiative or referendum petitions by election-law provisions should be viewed as invalidating a circulated petition, past California decisions have been most concerned with departures that affect the integrity of the process by misleading (or withholding vital information from) those persons whose signatures are solicited. *Costa v. Superior Court*, 37 Cal. 4th 986, 1016 (2006).

Whether a failure to comply with requirements of the Elections Code in circulating initiative or referendum petitions is fatal depends upon the nature and purpose of the statutory requirement. Technical defects of form may be excused if the petitions substantially comply with the requirement (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 652, but *actual compliance is required with respect to the substance essential to the objective of the statute*. *Ibarra v. City of Carson*, 214 Cal. App. 3d 90, 99 (Ct. App. 1989. *Where the purpose of the statutory requirement is to give information to the public to assist the voters in deciding whether to sign or oppose the petition, the substantial compliance argument is often rejected and strict compliance held essential*. *Ibid* and cases cited therein. The Supreme Court in *Costa v. Superior Court*, 37 Cal. 4th 986, 1012–13 (2006) acknowledged that "in instances in which a departure from a statutory requirement has been found to pose a realistic threat to the accuracy and integrity of the process—for example, by misleading the potential signers of an initiative petition regarding a significant feature of the proposed measure through the use of a confusing or *incomplete title*—courts have not been tolerant of such departures from procedural safeguards and have rejected claims that those who signed the petition could have avoided confusion by relying upon the full text of the measure included in the petition." [emphasis added] *Ibid*. at 1012-13.

Courts have identified two purposes for the title provision in Elections Codes 9203(b). *All for a Better Downtown Millbrae v. Wade*, 108 Cal. App. 4th 123, 130–31 (2003). One purpose is related to verification – printing the title and summary on every page ensures that signatures are not being submitted in support of a measure different from which were procured. The other purpose is more relevant to this case: "*the reprinting of the title reduces the risk that voters will be misled when asked to sign a petition to qualify a proposed measure for the ballot by making available to them a neutral explanation of the measure*." *Id.* citing *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243; *Songstad v. Superior Court* (2001) 93 Cal.App.4th 1202, 1211. Given that a primary purpose of the reprint provision is to provide notice to the voter in deciding whether to sign or oppose the petition, the Court finds that actual compliance is required. Given that the title omits significant changes to the current law, it facially violated the requirement that the title prepared by the city attorney appear on each signature page.

Even if a lesser standard of substantial compliance is required, the Court cannot find that the petition, as

printed, substantially complied with Elections Code 9203(b) given that the omissions in the title were significant regarding the proposed law. As stated above, the title omitted the following parts of the title prepared the city attorney: "Adding Construction Apprenticeship Requirements; Allowing Dispensary Off-Site Distribution; Limiting Dispensary Permit Revocations Unless They Constitute a 'Serious Threat and Reckless Disregard for Public Health, Safety and General Welfare'; and Other Changes." These are significant issues that reasonably would be significant for a voter in determining whether to support the petition. The Court cannot find that the parts of the title included in the petition would put a reasonable voter on notice of the substance of all of the proposed changes to the law.

Based on the above, the Court finds that Respondent Susan Garcia, acting in her capacity as City Clerk for the City of Lemon Grove, did not abuse her discretion in rejecting the petitions. The Court cannot find pursuant to Elections Code 13314 that there was "an error, omission, or neglect" in violation of the Election Code. The petition is DENIED./n

[1] In the papers, the City speculates as to possible "motives" for the omissions, Counsel for plaintiff insists it was a printing error or typographical error. The Court does not deem it necessary to speculate on motive and declines to do so.

Kenneth J. Medel

Judge Kenneth J Medel